

Panaji, 26th September, 2005 (Asvina 4, 1927)

SERIES II No. 25

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA

### SUPPLEMENT

#### GOVERNMENT OF GOA

Department of Labour

#### Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 19-04-2005 in reference No. IT/55/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 6th May, 2005.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/55/2003

Gomantak Mazdoor Sangh  
Shetye Sankul,  
3rd Floor,  
Ponda, Goa.

V/s

M/s. Hotel Mandovi,  
Panaji, Goa.

... Workmen/Party I

... Employer/Party II

Party I - Represented by Shri P. Gaonkar.

Party II - Represented by Adv. Shri P. Chawda.

Panaji, dated: 19-4-2005.

#### AWARD

In exercise of the powers conferred by sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 the Government of Goa, by order dated 19-8-2003 bearing No. 28/37/2002-Lab referred the following dispute for adjudication of this Tribunal.

- 1) Whether the following demands of the workmen of M/s. Mandovi Hotels (Pvt) Ltd., represented by Gomantak Mazdoor Sangh are legal and justified ?

#### (1) Demand No. 1 Pay Scale:-

Grade I : 1000-60-1300-70-1650-80-2050-90-2500-95-2975

Grade II : 1100-65-1425-75-1800-85-2225-95-2780-100-3200

Grade III : 1200-70-1550-80-1960-90-2400-100-2900-105-3425

Grade IV : 1300-75-1700-85-2125-95-2600-105-3125-110-3675

Grade V : 1500-80-1900-90-2350-100-2825-110-3400-120-4000

Grade VI : 1600-85-2025-95-2500-105-3025-115-3600-125-4225

#### (2) Demand No. 2 Flat Rise:-

Workmen shall be given the flat rise at the rate mentioned below:-

Grade: Rs. 500/-

Grade: Rs. 550/-

Grade: Rs. 600/-

The above amounts should be added to the existing basic and thereafter fitted in the revised pay scale in the higher stage.

**(3) Demand No. 3 Seniority Increments:-**

Workmen should be given seniority Increments as mentioned below:

Service upto 3 years:	One Increment
Service from 3 years to 7 years:	Two Increments
Service from 7 years to 10 years:	Three Increments
Service from 10 years to 15 years:	Four Increments
Service from 15 years to 20 years:	Five Increments
Service from 20 years and above:	Six Increments

**(4) Demand No. 4 Variable Dearness Allowance:**

The present rate of Variable Dearness Allowance is very less and hence the same shall be paid at the revised rate of Rs. 3/- per point rise beyond 1727 points (1960-100), the computation of Variable Dearness Allowance shall be made quarterly based on the average consumer price index of proceeding quarter. The Variable Dearness Allowance upto 2000 point shall be merged into fixed Dearness Allowance.

**(5) Demand No. 5 House Rent Allowance:**

The House Rent Allowance should be paid at the revised rate of 25% of Basic and Dearness Allowance, as the cost of accommodation is very high in Goa, being a Tourist State.

**(6) Demand No. 6 Education Allowance:**

The existing Education Allowance shall be revised by adding Rs. 350/- per workmen per month and shall be paid accordingly.

**(7) Demand No. 7 Transport Allowance:**

Those workmen who are not provided with transport facility, shall be paid Transport Allowance at the rate of Rs. 600/- per month.

**(8) Demand No. 8 Paid Holidays:**

All the workmen shall be granted paid holidays at the rate of 15 days per year.

**(9) Demand No. 8 Leave:**

That all the workers should be given leave on the following basis:

- (A) Earned Leave: Union demands that all the workmen should be given earned leave at the rate of 35 days Earned Leave per year with accumulation upto 120 days and leave shall be allowed to be taken 10 times in a year.
- (B) Casual Leave: That all the workmen should be given casual leave at the rate of 15 days per year.
- (C) Sick Leave: That all the workmen should be given sick leave at the rate of 15 days per year.

**(10) Demand No. 10 Leave Travel Assistance:**

All the workers should be paid Leave Travel Assistance at the revised rate of Rs. 2500/- per year, and be allowed to accumulate upto three years.

**(11) Demand No. 11 Medical Allowance:**

Workmen who are outside the purview of ESI shall be reimbursed all the medical expenses incurred by him for self and shall be paid Rs. 3500/- per annum towards the medical expenses for their dependents by the management.

**(12) Demand No. 12 Gifts:**

Workers should be given service award as mentioned below:

Service upto 10 years, gift worth Rs. 3500/- with service certificate.

Service from 10 years, to 20 years gift worth Rs. 5000/- with service certificate.

**(13) Demand No. 13 Bonus/Ex-gratia:**

Workmen shall be paid 20% of Bonus/Ex-gratia every year without any ceiling.

**(14) Demand No. 14 Festival Advance:**

Workmen shall be given Festival Advance at the rate of Rs. 3500/- once in year to be deducted in 10 equal installments.

**(15) Demand No. 15 Accident Benefits:**

Workmen who are outside the purview of ESI and who meet with an accident while on duty shall be granted special leave and shall be reimbursed all the medical expenses.

**(16) Demand No. 16 Loan and Advance:**

Workmen shall be granted an advance equivalent to 10 months gross wages and to be deducted in 36 equal installments.

**(17) Demand No. 17 Cash Handling Allowance:**

Workmen who required to handle the cash shall be paid cash handling allowance at the rate of Rs. 400/- per month.

(2) If not, what relief the workmen are entitled to?

2. On receipt of the reference a case was registered under No. IT/55/2003 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, 'union') filed its statement of claim at Exb. 3. The facts of the case in brief as pleaded by the union are that the Employer/Party II (for short, 'employer') is engaged in the business of hotel, catering to the tourists from all over world. That in the month of April, 2001 the workers of the employer resigned from the membership of Goa Trade and Commercial Workers Union and joined the union that is Gomantak Mazdoor Sangh and the management was informed about the workers joining the said union. That thereafter the union requested the management to negotiate on the charter of demands submitted by the union. That after several discussions a settlement was signed before the Labour

Commissioner which expired on 30-9-2001. That thereafter the union submitted a fresh charter of demands but the management refused to negotiate with the union and therefore an Industrial Dispute was raised before the Labour Commissioner, Panaji by the union. That after prolonged discussions a joined reference under Section 10(2) of the Industrial Dispute Act, 1947 was agreed to be made and accordingly the present reference was made by the Government by order dated 19-8-2002. The union contended that Goa is a tourist state and hence the cost of living is highest in the country and therefore the demands made by the union on behalf of the workers are fair, reasonable and just. The union contended that the demands raised by the union against the employer are legal and justified and prayed that the award be passed in favour of the union granting the demands raised by it.

3. The employer filed the written statement at Exb. 5. The employer stated that the workers were earlier represented by Goa Trade and Commercial Workers Union who served charter of demands vide letter dated 9-12-1998 in respect of revision of Pay Scales, Dearness Allowance Leave provisions, improvement of their service conditions; etc, and it also gave notice of termination of earlier settlement signed on 22-6-1996. The employer stated that in the course of the negotiations the management highlighted the difficult time the hotel industry as a whole and the employer in particular is passing through due to recession and also stiff competition from the old as well as the new entrants in the hotel industry. The employer appealed to the said union to come forward and assist the management to retrieve itself from the present financial crises. The employer stated that union appreciated the view point of the management but stated that the demand of the workmen were just and reasonable and as such the dispute could not be resolved and the statement could not be arrived at. The employer stated that in the meantime the workers left Goa Trade and Commercial Workers Union and joined Gomantak Mazdoor Sangh. The employer stated that the negotiations were held with the present union and in the conciliation proceedings a settlement was signed on 9-8-2001 and it remained in operation for a period from 1-10-1998 to 30-9-2001. The employer stated that on the expiry of the settlement dated 9-8-2001 the union gave notice of termination and served a 21 point charter of demands on the management on 1-10-2001. The employer stated that negotiations were held before the Labour Commissioner, Panaji in the conciliation proceedings but the settlement could not be arrived at and thereafter the parties submitted the application to the Government to make the reference of the dispute on charter of demands including bonus under Section 10(2) of the Industrial Dispute Act, 1947 and accordingly the Government gave a joint reference of the dispute to this Tribunal for adjudication. The employer stated that they did not have sufficient resources to meet the cost of upgradation which involves huge investment. The employer stated during the preceding five years there is tremendous fall in the room occupancy and the restaurants sales and

consequently the profit of the hotel have fallen down and its suffering sustained operational loss and the liabilities and the dues to the Government, banks, creditors, suppliers have been mounting. The employer stated that its future is bleak till date and it has been unable to come out of the crises. The employer stated that it does not have the financial capacity to meet any additional financial liability. The employer stated that the workmen are not entitled to any relief. The union thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties issues were framed at Exb. 7 and thereafter a case was fixed for recording the evidence of the union. However, before the evidence was recorded the parties submitted that they are trying to arrive at an amicable settlement and therefore at the request of the parties the case was fixed for filing the terms of settlement. Accordingly on 18-3-2005 the parties appeared and submitted that the dispute between them is amicably settled and they filed the terms of the settlement dated 17-3-2005 at Exb. 9. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workmen. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 17-3-2005 Exb. 9.

#### ORDER

It is agreed by and between the Employer and the Union (hereinafter referred to as the Parties) that the terms herein shall be applicable to the workmen referred to in Annexure 'A' to this Agreement.

1. It is agreed between the parties that for the period 1st October, 2001 to 30th September, 2004 all the workmen referred to in Annexure 'A' shall be paid an ex-gratia amount of Rs. 350/- per month.

The amount paid to each workmen as Interim Relief during the period shall be adjusted against this payment. Such payment shall not attract any statutory liabilities and the same shall be paid in 3 installments as under:

- 1st Installment of 20% on or before - 31-03-2005
- 2nd Installment of 40% on or before - 30-04-2005
- 3rd Installment of 40% on or before - 31-05-2005

#### 2. Pay scales/Flat Rise/Seniority Increments:

- a) It is agreed between the Parties that the Pay Scales and Grades presently applicable shall continue to apply during the operative period of this Settlement.
- b) It is agreed by and between the Parties that the workmen referred to in Annexure 'A' shall be entitled to flat rise of Rs. 100/- per month in their basic salary as on 1-10-2004 and shall be fitted in respective pay scales.

**3. House Rent Allowance:**

It is agreed between the Parties that with effect from 01-10-2004 all the workmen referred to in Annexure 'A' shall be entitled to House Rent Allowance of Rs. 150/- per month.

**4. Travelling/Conveyance Allowance:**

It is agreed between the parties that with effect from October 1, 2004 the Travelling/Conveyance Allowance payable to all workmen referred to in Annexure 'A' stands revised from Rs. 325/- to Rs. 425/- per month.

**GENERAL**

- a) It is agreed between the parties that this Settlement is in full and final settlement of all the demands raised by the Union in their Charter of Demands dated 01-10-2001. All other demands Terms and conditions of service which are not dealt with or specifically altered by this settlement and which form part and parcel of the earlier settlements shall continue to operate as at present.
- b) The Union/Workmen agree that their demands which have been settled by this Settlement have caused tremendous financial burden on the Management of the Hotel and as such the Union and the Workmen agree not to raise or pursue any demand involving additional financial burden on the Management during the operative period of this Settlement and this Settlement is in full and complete satisfaction of all the demands forwarded by the Union vide their Charter of Demand dated 1st October, 2001 and the claim in Ref. IT/55/2003 before the Honorable Industrial Tribunal.
- c) The Union and the workmen further agree that in the interest and progress of the hotel, they shall extend their whole hearted and full co-operation to the Management for improving the existing systems and to restructure and introduce new systems or methods which will help the Management to eliminate waste and to have efficient management of the hotel and its business.
- d) It is agreed between the parties that the operative period of this settlement is from 01-10-2001 to 30-09-2004 and this settlement shall continue to be in operation thereafter till it is terminated in accordance with the provisions of the Industrial Disputes Act, 1947.
- e) The Union agrees that maintenance of discipline and increasing efficiency in the company is a prime responsibility of the Management. The Union shall not interfere in or hinder performance of Management duty to enforce discipline within the provisions of law and existing practices and procedures.
- f) The Union further agrees that they shall not resort to any direct action to settle any dispute or difference with the Management and that they

shall try to settle such dispute or differences by mutual discussions with the Management and in case of failure to settle mutually, to have recourse to machinery under provision of the Industrial Disputes Act, 1947.

- g) It is agreed between the parties that the benefits arising out of this Settlement shall accrue to all the workmen referred to in Annexure 'A'.
- h) It is agreed between the parties that the existing facilities/privileges and benefit presently enjoyed by the workmen shall continue to remain un-altered.
- i) This Settlement shall be placed before the Honorable Industrial Tribunal in Ref. IT/55/2003 with a prayer for an award in terms of the Settlement.

**Annexure 'A'****LIST OF WORKMEN**

- |                         |                       |
|-------------------------|-----------------------|
| 1. Bapu Amberkar        | 2. Purva P Naik       |
| 3. Balchandra Mayekar   | 4. Bryan Almeida      |
| 5. Milagrine Fernandes  | 6. Sushilkumar Kalker |
| 7. Sandeep Navelkar     | 8. Narayan Kolambkar  |
| 9. Premanand Amonkar    | 10. Nandan Naik       |
| 11. Tulsidas Gawde      | 12. Sameer Parsekar   |
| 13. Thomas Fernandes    | 14. Tukaram Kankonkar |
| 15. Sylvester Rodrigues | 16. Khemu Madkaikar   |
| 17. Everisto Pinto      | 18. Prakash Naik      |
| 19. Vincent Moniz       | 20. Shiva Naik        |
| 21. Audhut Padki        |                       |

No order as to cost. Inform the Government accordingly.

Sd/-

(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

**Notification**

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 02-05-2005 in reference No. IT/16/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 6th May, 2005.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/16/2002

Shri Ravi Harmalkar,  
Mahakhazab Dhargal,  
Pernem, Goa.

... Workman/Party I

V/s

M/s. Whispering Palms,  
Beach Resort,  
Candolim,  
Bardez, Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Shri A. Kundaikar.

Panaji, dated: 2-5-2005.

#### AWARD

In exercise of the powers conferred by clause (d) sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by order dated 28-2-2002 bearing No. 28/2/2002-LAB referred the following dispute for adjudication of this Tribunal.

- "(1) Whether the action of the management M/s. Whispering Palms Beach Resort, Candolim Bardez, Goa in terminating the services of Shri Ravi Harmalkar, with effect from 13-1-2001, is legal and justified ?
- (2) If not, to what relief the workman is entitled to ?"

2. On receipt of the reference a case was registered under No. IT/16/2002 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, 'workman') filed its statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was employed as a Driver with the employer/Party II (for short, 'employer') from 19-3-1998. That the employer in order to deny the benefit of permanency and regularization to the workman, artificially and unilaterally issued the workman Fixed Term Contract letters for a specific period. That the workman inspite of the said letters worked continuously without break in service from 19-3-1998 till 13-1-2001. That some where on 13-1-2001 the management informed the workman that his services are not required any further with effect from 13-1-2001. The workman contended that the termination of service by the employer with effect from 13-1-2001 is in violation of section 25 (F) of the Industrial Disputes Act, 1947. The workman contended that the termination of his service by the employer is illegal and unjustified and prior to termination of his service he was not given any notice or notice pay nor any compensation. The workman claimed that he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer stated that the workman was appointed as a

Driver for a fixed term by executing fixed term contract dated 8-8-1998 on the terms and conditions contained therein. The employer stated that the workman was appointed on fixed term contract with effect from 19-3-1998 to 18-9-1998 and it was renewed from further three months from 19-10-1998 to 18-1-1999 and the workman left the services on cessation of the contract. The employer stated that on the expiry of the contract the workman approached the employer on 1-3-1999 for execution of a fresh fixed term contract and on humanitarian grounds to give employment to the workman a fresh fixed term contract was executed on March, 1999 for a period of 1-3-1999 to 31-8-1999. the employer stated that on the expiry of the said contract at the request of the workman a fresh fixed term contract was executed on 10-6-2000 for the period from 9-3-2000 to 31-8-2000; and at the expiry of the said contract the workman approached the employer for executing a fresh fixed term contract which was executed for the period 6-9-2000 to 15-2-2001. That somewhere in the month of January, 2000 the workman abandoned the services without any intimation thereby causing loss to the employer and since the workman remained absent for six consecutive days without permission of the management which was presumed that he has terminated the contract as per the terms of fixed term contract. The employer denied that the workman was told at any time or on 13-1-2001 that his services are not required with effect from 13-1-2001. The employer denied that termination is in violation of Section 25(F) of Industrial Disputes Act, 1947. The employer stated that the provisions of Section 25(F) did not apply to the workman as he was appointed on fixed term contract. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 6.

4. On the plea lings of the parties issues were framed at Exb. 7 and thereafter the evidence of the workman was recorded. After completing the evidence of the workman the case was fixed for recording the evidence of the employer. At this stage the parties submitted that they are trying to arrive at an amicable settlement and at the request of the parties, the case was fixed on 7-3-2005 for filing the terms of the settlement. On this date Adv. Shri Suhas Naik, appeared on behalf of the workman and Adv. Shri A. Kundaikar appeared on behalf of the employer. They submitted that the dispute between the parties are settled and they filed the terms of settlement dated 7-3-2005 at Exb. 10. They prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 7-3-2005 Exb. 10.

#### ORDER

1. The Party I/Workman does hereby waives all his claims demand and disputes and has no other

claim. It is agreed by Party I/Workman that he shall not claim subject matter of reference in future before any other Tribunal.

2. It is agreed by the Workman/Party I that he shall not raise any claim for any monetary or any back wages in respect of the dismissal in service and the said dispute stands conclusively settled.
3. The parties to the above reference have amicable settled the dispute. The Party II shall pay a sum of Rs. 10,000/- (Rupees ten thousand only) as ex-gratia payments.
4. It is agreed by the parties that the claim raised by the workman/Party I in the reference shall stand conclusively settled.

No order as to cost. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 06-05-2005 in reference No. IT/122/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 19th May, 2005.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/122/99

Shri Sonu C. Simepuruskar,  
Oxel Bhatti,  
Siolim, Bardez, Goa.

... Workman/Party I

V/s

M/s. Alfran Realtors Pvt. Limited,  
Alfran Group of Company,  
Gomes Catao Complex,  
Mapusa, Bardez, Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. Shri A. Poulekar.

Employer/Party II - Represented by Adv. Shri P. J. Kamat.

Panaji, dated: 6-5-2005.

#### AWARD

In exercise of the powers conferred by clause (d) sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by order dated 29-09-1999 bearing No. IRM/CON-MAP/(73)/99/4938 referred the following dispute for adjudication of this Tribunal.

- (1) "Whether the action of management M/s. Alfran Realtors Engineers, Builders and Developers, Gomes Catao Complex, Mapusa, Bardez, Goa in terminating the services of Shri Sonu C. Simepurushkar, Store Keeper, with effect from 29-1-1999, is legal and justified ?
- (2) If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/122/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman/Party I (for short 'workman') are that he was appointed as a Store Keeper from 20-11-1994 by Alfran Group of Companies Mapusa, Goa, on salary of Rs. 600/- per month and on 26-11-1994 he was deputed to the employer/Party II (for short, 'employer') as a store keeper. That the workman worked as store keeper at various properties of the employer located in Goa and his salary was increased from time to time. That the workman discharged his duties conscientiously and diligently. That by letter dated 27-1-99 the employer terminated the services of the workman with effect from 29/ /1999 and prior to termination of his services no inquiry was held against him nor any misconduct was alleged against him. The workman contended that the action of the employer of terminating his services is illegal arbitrary and unjustified. The workman claimed that he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer stated that the dispute referred is not maintainable against the employer as it was not the employer of the workman at the time when the service was terminated. The employer stated that it is not an industry as defied under the Industrial Disputes Act, 1947. The employer denied that the workman was appointed as a store keeper by Alfran Group of Companies, Mapusa, Goa, and stated that he was appointed by Mrs. Alfran Realtors, Mapusa and he was deputed to maintain the stores at various sites. The employer denied that during the course of the employment, the workman discharged his duties conscientiously and diligently. The employer admitted that by letter dated 27-1-1999 the services of the workman were terminated with effect from 29-1-1999 without conducting any disciplinary enquiry against him. The employer stated that the termination of service of the workman was on account of the completion of the construction project at Beira-Mar. The employer denied

that the termination of service of workman is illegal, arbitrary and unjustified. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 8.

4. On the pleadings of the parties issues were framed at Exb. 9 and thereafter the case was fixed for recording of the evidence of the workman. The workman filed his affidavit in evidence at Exb. 17 and thereafter the case was fixed for the cross examination of the workman. After completing the cross examination of the workman the case was fixed for his further evidence. At this stage the parties submitted that they are trying to arrive at an amicable settlement and therefore at the request of the parties the case was fixed on 5-5-2005 for filing the terms of settlement by the parties. Accordingly on the said date workman appeared in person and Adv. Shri P. J. Kamat appeared on behalf of the employer. He submitted that the dispute between the parties is amicably settled and they filed the terms of settlement dated 5-5-2005 at Exb. 21. They prayed that consent award be passed in terms of settlement. I have gone through the terms of settlement which are duly signed by the parties and I am satisfied with the said terms are certainly in the interest of the workman. I therefore accept the submission made by the parties and pass the consent award in the terms of settlement dated 5-5-2005 Exb. 21.

Order

1. It is agreed between the parties that the termination of services of Mr. Sonu Simepurushkar shall be deemed to be resignation with effect from 29-1-1995.
2. It is agreed between the parties that the management of M/s. Alfran Realtors shall pay an amount of Rs. 50,000/- (Rupees fifty thousand only) to Mr. Sonu Simepurushkar in full and final settlement of all his legal dues including gratuity etc.
3. It is agreed by the Party I that the amount of Rs. 50,000/- (Rupees fifty thousand only) has been paid to him by the Party II.
4. It is agreed between the parties that on account of this payment, the parties shall have no claim of whatsoever nature against each other.
5. It is agreed the parties that these consent terms shall be filed in Ref. No 122/99 for a Consent Award.

No order as to cost. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 06-05-2005 in reference No. IT/10/93 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 19th May, 2005.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/10/93

Shri Ravindra Atmaram Mahale,  
Rep. by The General Secretary,  
All Goa Co-operative Workers Union  
C/o D. P. Bhise, Advocate,  
Opp. Konkan Tours & Travels, 1st Fl.,  
31st January Road,  
Panaji-Goa.

... Workman/Party I

V/s

The Chairman,  
M/s. Goa Bagayatdar S.K.V. Society Ltd.,  
Bagayatdar Bhavan,  
Ponda-Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. Shri D. P. Bhise.

Employer/Party II - Represented by Adv. Shri A. Nigalye.

Panaji, dated: 6-5-2005.

AWARD

In exercise of the powers conferred by clause (d) sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by order dated 5-1-1993 bearing No. 28/61/92-LAB referred the following dispute for adjudication of this Tribunal.

Whether the action of the management of M/s. Goa Bagayatdar Sahakari Kharedi Vikri Society Ltd., Ponda-Goa, in terminating the services of Shri Ravindra Atmaram Mahale, Clerk, with effect from 24-6-92, is legal and justified ?

If not, to what relief the workman is entitled ?

2. On receipt of the reference a case was registered under No. IT/10/93 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The facts of



the case in brief as pleaded by the workman are that he was employed by the Employer/Party II (for short, 'employer') as a clerk from 6-6-83. That he is the member of All Goa Co-operative Workers Union and the said union has submitted charter of demands to the employer on or about 18-1-1990. That conciliation proceedings were held before the Labour Commissioner, Panaji in respect of the charter of demands submitted by the union but no settlement could be arrived at. That the employer adopted unfair labour practice by refusing employment to 4 of its employees which resulted into token demonstration on 26-11-1990 in response to the call given by the union. That on or about 1-2-91 the employer issued a charge sheet to the workman and pending the enquiry he was suspended. That after the report was submitted by the Inquiry Officer the workman submitted his explanation and requested for sympathetic action and the employer did not impose penalty and he was reinstatement in service somewhere in September, 1991. That pursuant to the resolution passed by the union in the General Body meeting strike notice was served on the employer for settlement of charter of demands and since there was no settlement the workers proceeded on strike w.e.f. 20-4-94. That consequent to the participation of the workman in the said strike the employer issued a letter dated 6-5-92 to the workman threatening disciplinary action against him and in the said letter he was informed that his surety bond has been cancelled by the sureties. That the workman approached the employer with fresh but the employer did not accept them and his services were terminated w.e.f. 24-6-1992. The workman contended that the termination of his service by the employer is illegal and unjustified and therefore he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer denied that the workman had unblemished service records. The employer stated that All Goa Co-operative Workers Union does not represent the workers of the employer and that they are represented by the union known as Goa Bagayatdar Karamchari Kalyan Sangathana. The employer stated that disciplinary proceedings were initiated against the workman and enquiry was conducted into the charges levelled against him and he was suspended from December, 1990 and his suspension was neither revoked nor he was reinstated in service. The employer stated that by letter dated 26-9-91 the workman admitted his guilt and requested for lenient view. The employer denied that the termination of service of the workman is because of his participation in strike or by way of victimisation. The employer stated that the action was taken against the workman on the basis of the enquiry report submitted by the Inquiry Officer. The employer stated that misconduct was proved against the workman in the enquiry and therefore punishment was imposed on him. The employer stated that the termination of service of the workman is illegal and unjustified. The employer denied that the workman is entitled to any relief. The employer stated that this Tribunal has no jurisdiction to adjudicate the reference as he has alternate remedy under the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa and as

per the provisions of Goa, Daman and Diu Shops and Establishment Act, 1973. The workman thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties, issues were framed at Exb. 7 and thereafter the evidence of the workman was recorded. After recording the evidence of the workman the case was fixed for recording the evidence of the employer. When recording of the evidence of the employer was in progress, the parties submitted that they are trying to arrive at an amicable settlement and therefore at their request the case was fixed on 19-4-05 for filing the terms of settlement by the parties. Accordingly, on this date the parties appeared and they filed the terms of settlement dated 19-4-2005 at Exb. 30. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 19-4-2005 at Exb. 30.

## ORDER

1. The Party II shall pay to the Party I a sum of Rs. 1,10,000/- (Rupees one lakh and ten thousand only) in full and final settlement of his claim in Reference No. IT/10/93 pending in the Hon'ble Industrial Tribunal, Government of Goa, at Panaji-Goa.
2. Out of the said sum of Rs. 1,10,000/- (Rupees one lakh and ten thousand only) the Party II shall draw a cheque of Rs. 15,000/- (Rupees fifteen thousand only) on behalf of Party I to Shri D. P. Bhise, Advocate, towards his legal fees payable to him by the Party I and hand over the said cheque to Shri D. P. Bhise. The Party II shall pay the remaining amount of Rs. 95,000/- (Rupees Ninety five thousand only) to the Party I.
3. The Party I and Shri D. P. Bhise shall issue receipt to the Party II in acknowledgment of having received the said sum of Rs. 95,000/- (Rupees Ninety five thousand only) and Rs. 15,000/- (Rupees fifteen thousand only).
4. The Party I hereby agrees and declares that all his disputes, in Reference No. IT/10/93 have been conclusively settled with the signing of these consent terms and Party I has no further claim or demand against the Party II any nature whatsoever.
5. The Parties agree to file these consent terms in the Hon'ble Industrial Tribunal, Government of Goa, at Panaji, Goa in Reference No. IT/10/93 with request to pass consent award in terms thereof.

No order as to cost. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.



**Notification**

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 10-05-2005 in reference No. IT/120/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 19th May, 2005.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/120/99

Shri Xavier Joaquim Manuel Rodrigues,  
Voilo Vaddo,  
Bicholim-Goa. ... Workman/Party I

V/s

M/s. Vishranti Bus Services,  
Karapur, Tisk,  
Vithalapur, Sanquelim, Goa. ... Employer/Party II

Party I - Represented by Adv. Shri Suhas Naik.

Party II - Represented by Adv. Shri V. Shirodkar.

Panaji, dated: 10-5-2005.

**AWARD**

In exercise of the powers conferred by clause (d) sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 28th September, 1999 bearing No. IRM/CON-MAP/91/97/4935 referred the following dispute for adjudication of this Tribunal.

Whether the action of the employer M/s. Vishranti Bus Service, Karapur, Tisk, Vithalapur, Sanquelim-Goa, in refusing employment to Shri Xavier Joaquim Manuel Rodrigues, driver, with effect from 16-9-97, is legal and justified ?

If not, to what relief the workman is entitled ?

2. On receipt of the reference a case was registered under No. IT/120/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The facts of the case in brief as pleaded by the workman are that the workman/Party I (for short 'workman') was employer with the Employer/Party II (for short, 'employer') as a driver on monthly salary of Rs. 1000/- since February, 1981. That

the employer is engaged in the business of operating private buses on various routes in Goa and the employer had a fleet of buses namely, GDT-2476; GDT-2371; GDS-1782 and GDS-1694. That in the 1st week of September, 1997 the workman asked for increase in his salary. That on 15-9-97 the employer told the workman not to report for work from 16-9-97. That at the time of refusal of employment no reasons were given to the workman by the employer regarding refusal of employment. The workman contended that refusal of employment to him by the employer is illegal and unjustified and the same is in violation of the provisions of Sec. 25F of the industrial Disputes Act, 1947. The workman stated that before refusal of employment to him he was not issued any warning, memo, show cause notice or charge sheet. The workman contended that since the termination of his service is illegal and unjustified he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 4. The employer stated that the workman is not a 'workman' under the provisions of Industrial Disputes Act, 1947 as he was neither a permanent nor temporary employee of the employer. The employer denied that the workman was employed as a driver on regular basis from the year 1981. The employer stated that since the workman was never employed with the employer, there was no question of refusing employment to him. The employer denied that in the 1st week of September, 1997 the workman asked for increase in his salary and that because of it on 15-9-97 the employer told him not to report for work from the next day. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties, issues were framed at Exb. 6 and thereafter the case was fixed for recording the evidence of the workman. Accordingly the evidence of the workman was recorded and thereafter the case was fixed for recording the evidence of the employer. On behalf of the employer the affidavit in evidence of Shri Kishore Hanjunker, the Power of Attorney holder of Shri Narcinva Hanjunker, the Proprietor of the employer M/s. Vishranti Bus Services, was filed and thereafter the case was fixed for recording the cross examination of Shri Kishore Hanjunker. On 9-1-2004 an application was filed at Exb. 14 on behalf of the employer stating that Shri Narcinva Hanjunker the Proprietor of the employer expired on 6-12-2003 and the said application was supported by the death certificate of Shri Narcinva Hanjunker. Thereafter the workman filed an application dated 8-4-2004 at Exb. 15 stating that Shri Narcinva Hanjunker, the Proprietor of the employer expired on 6-12-2003 leaving behind his son Shri Kishore Hanjunker as his legal heir. The workman prayed that Shri Kishore Hanjunker be brought on record as the legal heir of the Proprietor Shri Narcinva Hanjunker and the case be proceeded with. The employer filed reply. The notice of the application was given to Shri Kishore Hanjunker who filed reply dated 13-7-2004 Exb. 16 objecting to the application. He stated that Shri Narcinva Hanjunker has already sold the buses long time back and no amount of share of interest is inherited by him in the said

proprietary concern M/s. Vishranti Bus Service. He stated that though he is the son of deceased Shri Narcinva Hanjunker he is neither the proper nor a necessary party before this Tribunal in the above case. He therefore prayed that application may be dismissed.

5. This Tribunal by order dated 8-4-2005 dismissed the application dated 8-4-2004 Exb. 15 filed by the workman for bringing on record Shri Kishore Hanjunker as the legal heir of the deceased Shri Narcinva Hanjunker holding that there is no evidence to show that Shri Kishore Hanjunker has taken over the business of his deceased father or that he has succeeded to the said business or that Shri Narcinva Hanjunker has left behind any estate and Shri Kishore Hanjunker has succeeded to the said estate. In fact Shri Kishore Hanjunker had stated in his reply that his father who was the proprietor of M/s. Vishranti Bus Service had sold the buses long time back and that M/s. Vishranti Bus Service is not in existence. In the above circumstances, there is no employer before this Tribunal in the present reference.

6. "Industrial dispute" has been defined under Sec. 2(k) of the Industrial Disputes Act, 1947. As per the said section industrial dispute means any dispute between employers and employees, or between employers and workmen or between workmen and workmen which is connected with the employment or non employment or the terms of employment or with the conditions of labour of any persons. In the present case the dispute was raised by the workman against the employer regarding his non-employment, that is, termination of his service. This being the case the presence of the existence of the employer before the Tribunal is essential. In the absence of the employer there cannot be any industrial dispute. There has to be an employer against whom relief can be granted. In the present case, in the circumstances stated above, there is no employer before this Tribunal and consequently the industrial dispute no more exists. This being the case. I hold that the reference does not survive.

In the circumstances I pass the following order.

#### ORDER

It is hereby held that there is no industrial dispute and consequently the reference does not survive.

No order as to cost. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 11-05-2005 in reference No. IT/84/89 is hereby published as required by

Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 19th May, 2005.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/84/89

Shri Damodar V. Naik,  
Amya Wada, Tonca,  
Marcela-Goa.

... Workman/Party I

V/s

M/s. Kadamba Transport  
Corporation Ltd.,  
Panaji, Goa.

... Employer/Party II

Workman/Party I - Represented by Adv. Shri A. Nigalye.

Employer/Party II - Represented by Adv. Shri A. Palekar.

Panaji, dated: 11-5-2005.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 16-11-1989 bearing Number 28/57/89-Lab referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Kadamba Transport Corporation Limited, Panaji, Goa, in dismissing the services of Shri Damodar V. Naik, Conductor, with effect from 30-11-1988 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/84/89, and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman/Party I (for short 'workman') filed his statement of claim at Exb. 2. The facts of the case in brief as pleaded by the workman are that he was employed with the employer/Party II (for short, 'employer') as a conductor. That on or about 26-09-1986 he received a charge sheet issued by the employer alleging certain acts of misconduct against him and that the said acts constitute misconducts under clause 28 (Lv), (xv), (xxxv), (Lxi) (Lxiv) of the Certified Standing Orders of the employer. That the workman submitted an explanation vide letter dated 9-10-1986 denying the charges leveled against him in the charge sheet. That a domestic enquiry was held against the workman and on completing the enquiry the Inquiry

Officer submitted his findings dated 25-8-1988 holding that the charges at Sr. Nos. 1, 2, 4 & 5 stood proved against the workman and that the charge at Sr. No. 3 was not proved. That a show cause notice dated 28-10-1988 was issued to the workman asking him to show cause why punishment of dismissal from service should not be imposed on him. That on receipt of the reply from the workman the employer by order dated 30-11-1988 dismissed the workman from service with immediate effect. The workman contended that the enquiry conducted against him is not just and proper and it was held in violations of the principles of natural justice. The workman contended that the findings given by the Inquiry Officer are perverse as the same findings are not based on evidence on record. The workman contended that the punishment of dismissal from service imposed on him is disproportionate to the acts of misconduct alleged against him. The workman contended that the action of the employer in dismissing from service with effect from 30-11-1988 is illegal and unjustified and as such he is liable to be reinstated in service with full back wages.

3. The employer filed written statement at Exb. 3. The employer admitted that the workman was working as a Conductor with the employer. The employer stated that on 25-2-1986, 29-5-1986, 17-8-1986, 9-9-1986 and 21-9-1986 the inspecting staff carried out the checking of the bus on which the workman was the conductor and having found the defaults committed by the workman the checking staff recorded the statement of the workman as well as that of the passengers and submitted their reports. The employer stated that thereafter the charge sheet dated 22-9-1986 was issued to the workman and subsequently enquiry was held. The employer denied that the enquiry was not held in a fair and proper manner or that it was held in violations of the principles of natural justice. The employer denied that the findings given by the Inquiry Officer are perverse or that they are not based on evidence on record. The employer contended that the dismissal of workman from service is legal and justified and the workman is not entitled to any relief as claimed by him.

4. On the pleadings of the parties issues were framed at Exb. 4. The issue No. 1 which was relating to the fairness of the enquiry was treated as preliminary issue and the parties led evidence on the said issue. By findings dated 18-9-1995 this Tribunal held that the domestic enquiry held against the workman is just and proper and the parties were directed to lead evidence on the other issues. Accordingly the parties led evidence on the other issues. Subsequently, it was found that the issue No. 2 which was on the guilt of misconduct of the workman proved in the enquiry was also required to be decided as preliminary issue and therefore it was agreed that the issue No. 2 would be decided first as a preliminary issue before deciding the other issues. Accordingly, the case was fixed for hearing arguments on the issue No. 2. Before the arguments were heard the parties submitted that they are trying to settle the dispute amicably and at their request the case was fixed on 18-3-2005 for filing the terms of the settlement. On the said date the workman appeared along with their

Adv. Shri B. Dessai and Adv. Shri A. Palekar appeared on behalf of the employer. They submitted that the dispute between the parties is amicably settled. They filed the terms of settlement dated 18-3-2005 at Exb. 14 and prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 18-3-2005 Exb. 14.

#### ORDER

1. The workman/Party I do and does hereby Waives all his claims, demand and disputes and has no other claims. It is agreed by the workman/Party I that he will not claim subject matter reference in future in any other Tribunal or Court.
2. It is agreed between the parties that, the Workman concern in the reference shall be appointed in the service of the Corporation as a Conductor within 15 days from the date of filing the consent terms.
3. It is agreed by the Employer/Party I that the Workman/Party I will be appointed as a fresh Conductor on probation in terms of Certified Standing Orders of the Corporation in the pay Scale of Rs. 3050-75-3950-80-4590/-.
4. It is agreed by the workman/Party I, to accept the fresh appointment without back wages, without Continuity in service and without protecting the Seniority.
5. It is agreed between the parties that, the workman/Party I will not entitled for benefits of arrears/difference in wages from the date of dismissal till date of joining.
6. It is agreed by the workman/Party I that, he will fully Co-operate with Employer/Party II in discharging his duties sincerely.
7. It is agreed by the workman/Party I that, he will not raise any claim before any authority for any back wages/Monetary benefits and Seniority in service.
8. It is agreed by Employer/Party I that he will withdraw all the claim applications filed before the concerned authorities prior to joining to the duties.
9. It is agreed between the parties that the claim raised in the above reference stands conclusively settled in terms of the present consent terms.

No order as to cost. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

**Notification**

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 06-05-2005 in reference No. IT/76/92 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 19th May, 2005.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/76/92

Shri Prakash V. Kochrekar,  
All Goa Co-operative Workers Union,  
Opp. Konkan Tours & Travels,  
1st Floor, 31st Jan. Road,  
Panaji-Goa.

... Workman/Party I

V/s

The Chairman,  
M/s. Goa Bagayatdar Sahakari Kharedi  
Vikri Society Limited,  
Bagayatdar Bhavan,  
Ponda-Goa.

... Employer/Party II

Workman/Party I - represented by Adv. Shri D. P. Bhise.

Employer/Party II - represented by Adv. Shri A. Nigalye.

Panaji, dated: 6-5-2005.

**AWARD**

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 19-11-92 bearing No. 28/49/92-LAB referred the following dispute for adjudication by this Tribunal.

Whether the action of the management of M/s. Goa Bagayatdar Sahakari Kharedi Vikri Society Ltd., Ponda-Goa, in terminating the service of Shri Prakash V. Kochrekar, Clerk, with effect from 1-7-91 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/76/92, and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I

(for short, 'workman') filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed with the employer/Party II (for short, 'employer') as a clerk. That he was issued a charge sheet dated 4th October 1990 making allegations that his behaviour was unbecoming of a servant of the Society. That the workman was sick as he had met with a minor accident on scooter and this fact was intimated to the Branch Manager at Sanquelim by letter dated 17-7-90 and thereafter medical certificate was produced. That however, he was refused employment on 23-7-90 by the employer without assigning any reason. That an enquiry was conducted against the workman in respect of the said chargesheet and thereafter the Inquiry Officer submitted his report on 20-3-91. That the report of the Inquiry Officer is perverse and the enquiry conducted by him not fair and proper. That the employer terminated the services of the workman w.e.f. 1-7-91 vide letter dated 27-6-91. The workman contended that the termination of his service by the employer is illegal and unjustified and he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 4. The employer admitted that a charge sheet was issued to the workman as he committed certain acts of misconduct, and Adv. Shri Tendulkar was appointed as the Inquiry Officer for conducting the enquiry into the said charge sheet. The employer stated that the workman inspite of the opportunities given did not participate in the enquiry and therefore the enquiry was conducted ex-parte against him. The employer denied that the enquiry was conducted not in a fair and proper manner or that the findings of the Inquiry Officer are perverse. The employer denied that the termination of the service of the workman is illegal or mala fide or arbitrary. The employer denied that there was any prior refusal of employment to the workman as contended by him. The employer stated that the workman is not entitled to any relief as claimed by him as the termination is legal and justified. The workman thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties issues were framed at Exb. 6 and the issue Nos. 1, 3, 4A and 5 were treated as preliminary issues. Accordingly the parties led evidence on the said issues and thereafter the case was fixed for hearing arguments. At this stage the parties submitted that they are trying to arrive at an amicable settlement and at the request of the parties the case was fixed on 19-4-2005 for filing the terms of settlement. On this date the parties appeared and submitted that the dispute between them is amicably settled and they filed the terms of the settlement dated 19-4-2005 at Exb. 20. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 19-4-2005 Exb. 20.

## ORDER

1. The Party II shall pay to the Party I a sum of Rs. 70,000/- (Rupees Seventy thousand only) in full and final settlement of his claim in Reference No. IT/76/92 pending in the Hon'ble Industrial Tribunal, Government of Goa, at Panaji-Goa.
2. Out of the said, sum of Rs. 70,000/- (Rupees Seventy thousand only) the Party II shall draw a cheque of Rs. 10,000/- (Rupees Ten thousand only) on behalf of Party I to Shri D. P. Bhise, Advocate, towards his legal fees payable to him by the Party I and hand over the said cheque to Shri D. P. Bhise. The Party II shall pay the remaining amount of Rs. 60,000/- (Rupees Sixty thousand only) to the Party I.
3. The Party I and Shri D. P. Bhise shall issue receipt to the Party II in acknowledgment of having received the said sum of Rs. 60,000/- (Rupees Sixty thousand only) and Rs. 10,000/- (Rupees Ten thousand only).
4. The Party I hereby agrees and declares that all his disputes, in Reference No. IT/76/92 have been conclusively settled with the signing of these consent terms and Party I has no further claim or demand against the Party II of any nature whatsoever.
5. The Parties agree to file these consent terms in the Hon'ble Industrial Tribunal, Government of Goa, at Panaji, Goa in Reference No. IT/76/92 with request to pass consent award in terms thereof.

No order as to cost. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

**Notification**

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 13-05-2005 in reference No. IT/16/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 27th May, 2005.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/16/2003

Shri Florence D'Silva,  
Ecoxim, P. O. Betim,  
Bardez-Goa.

... Workman/Party I

V/s

M/s. UVI Holidays Ltd.,  
Chogum Road,  
Alto Porvorim,  
Bardez-Goa.

... Employer/Party II

Workman/Party I - Absent.

Employer/Party II - Represented by Adv. Shri P.  
Chaudiker.

Panaji, dated: 13-5-2005.

**AWARD**

In exercise of the powers conferred by clause (d) sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 21-3-2003 bearing No. 28/5/2003-Lab/995 referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. UVI Holidays Ltd., Alto Porvorim, Bardez, Goa, in terminating the services of Shri Florence D'Silva, Driver with effect from 26-11-2001 is legal and justified ?

If not, to what relief the workman is entitled to ?"

2. On receipt of the reference a case was registered under No. IT/16/2003 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short 'workman') filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that the Employer-Party II (for short, "Employer") is a limited company engaged in travel services having several branches in India, at Bangalore, Bombay, Cochin and other places. That the workman was employed as a driver on probation vide letter dated 3-10-2000. The workman contended that he was given a break in service without any reason during months of July and August and when he reported on 1st September, 2001, he was asked by the employer to resume duties w.e.f., 10-10-2001. The workman stated that the employer made an allegation against him pertaining to a misconduct of misappropriation to which he wrote a letter dated 20-11-2001 to the employer denying the same. The employer issued termination order dated 26-11-2001 stating that the explanation given by him vide letter dated 20-11-2001 is not acceptable and that his services were terminated with immediate effect. The workman stated that he wrote a letter dated 8-12-2001 seeking reinstatement in service. However, the employer rejected the request of the workman. Thereafter the workman raised an industrial dispute before the Asst. Labour Commissioner, Mapusa, which

subsequently ended in failure and a failure report was recorded on 29-11-2002. The workman stated that principles of natural justice has been grossly flouted as no show cause notice nor charge sheet was issued to him nor enquiry was conducted and hence the termination is illegal and unjustified. The workman claimed reinstatement in service with full back wages and continuity of service.

3. The employer filed written statement at Exb. 5. The employer by way of preliminary objections stated that the reference is null and void as the subject matter is not an industrial dispute; that there is no application of mind by the appropriate Government and that the workman is not a "workman" as contemplated under Sec. 2(s) of the Industrial Disputes Act, 1947. The employer admitted that the workman was employed as a driver and he joined the services from 3-10-2000 on the terms and conditions mentioned in the letter of appointment and he left the employment from 30th June, 2001 for better prospects. The employer stated that the workman again offered himself for employment in the month of September, 2001 but he was taken in employment only on 10-10-2001 purely on temporary basis. The employer stated that on 15-11-2001 the workman was driving the vehicle which was carrying the guests on site seeing trip and one Mr. Mohammed Siraj the employee of the employer was a tour guide. The employer stated that Mr. Siraj in the course of the trip made a representation to the guests that the employer runs an Orphanage Home and requested them to denote either a pound or Rs. 100/- as the case may be and thereafter Mr. Siraj collected the donations in the first aid box fitted in the vehicle and thereafter the said amount was shared by Mr. Siraj with the workman. The employer stated that subsequently on 16th November, 2001 also a similar incident was virtually repeated by the workman requesting Mr. Marc D'Souza the sales representative of the employer who was in the vehicle to take the first aid box for collection who refused to do so and advised the workman to refrain from indulging in such acts. The employer stated that on receiving complaints from the guests as well as Mr. Marc D'Souza an enquiry was conducted which established that on 15th November the workman along with Mr. Siraj had entered into a conspiracy to defraud the unsuspecting guests who came to the country from various parts of the world and on 16th November the workman made an unsuccessful attempt to make a honest employee a part of his conspiracy. The employer stated that the said action has tarnished the fair name of the employer and has lowered the employer in the eyes of the guests. The employer stated that on confronting Mr. Siraj with the complaint from the guests he preferred to resign. The employer stated that the explanation given by the workman on 20-11-2001 was found unsatisfactory and the management lost confidence in him and having come to the conclusion that it was not in the interest of the employer to continue the workman in service, decided to terminate his service and accordingly the service of the workman were terminated by letter dated 26-11-2001. The employer stated that the workman

thereafter approached and pleaded guilty and accepted his legal dues in full and final settlement and gave a receipt dated 26-11-2001 to that effect. The employer stated that thereafter a letter dated 8-12-2001 was received from the workman requesting revocation of termination which was followed by the letter dated 18-1-2002 from the office of the Labour Commissioner wherein was enclosed a letter from the workman demanding reinstatement with back wages. The employer stated that by letter dated 4-3-2002 the Commissioner was informed that the workman has been discharged from service because the management lost confidence in him and therefore the claim for reinstatement cannot be subject matter of an industrial dispute and further stated that the workman has received his dues in full and final settlement and as such he is stopped from raising any dispute in the matter of his discharge. The employer stated that no settlement could be arrived at and the conciliation proceedings ended in failure. The employer stated that the termination of service of the workman vide order dated 26-11-2001 which is signed by the competent authority is legal and justified. The employer stated that if this Tribunal comes to the conclusion that the termination is by way of misconduct, the employer may be permitted to lead evidence in support of the charges. The employer stated that since the termination of service of the workman is legal and justified he is not entitled to any relief. The workman thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties, following issues were framed at Exb. 7.

1. Whether the Party I proves that the action of the Party II in terminating his services w.e.f., 26-11-2001 is illegal and unjustified ?
2. Whether the Party II proves that the dispute referred by the Government is not an industrial dispute ?
3. Whether the Party II proves that the Party I is not a workman as defined under Sec. 2(s) of the Industrial Disputes Act, 1947 ?
4. Whether the Party I is entitled to any relief ?
5. What Award?

5. My findings on the issues are as follows:

1. Issue No. 1: In the negative.
2. Issue No. 2: In the negative.
3. Issue No. 3: In the negative.
4. Issue No. 4: In the negative.
5. Issue No. 5: As per order below.

#### REASONS

6. Issue Nos. 2 & 3: Both these issues are taken up together and they are decided first because they are related to the maintenance of the reference. The employer had taken a defence in the written statement



that the dispute referred by the Government is not an 'industrial dispute' and the workman is not a 'workman' as defined u/s 2(s) of the Industrial Disputes Act, 1947. Since by raising the above defence the employer wanted to oust the jurisdiction of this Tribunal to decide this dispute, the burden was on the employer to prove the said issues as per the settled law. The opportunity was given to the employer to lead evidence. However, it was submitted on behalf of the employer that since the workman has not led evidence in the matter as it was for him to prove that the termination of his service is illegal and unjustified the employer also does not want to lead any evidence in the matter. Since there is no evidence from the employer on the issue Nos. 2 and 3 the employer has failed to discharge the burden cast on it and therefore in the absence of any evidence from the employer it has to be held that the employer has failed to prove that the dispute referred by the Government is not an industrial dispute and the workman is not a 'workman' as defined u/s 2(s) of the Industrial Disputes Act, 1947. I, therefore answer the issue Nos. 2 and 3 in the negative.

7. Issue No. 1: The reference of the dispute was made by the Government at the instance of the workman since he challenged the action of the employer of terminating his services w.e.f. 26-11-2001 and thus he raised an industrial dispute. Since the workman had contended that termination of his services by the employer is without holding any enquiry against him prior to termination of his services and otherwise also the action of the employer is illegal and unjustified, the burden was on the workman to prove that termination of his services is illegal and unjustified. The workman was given several opportunities to lead his evidence. However, in spite of the opportunity given, the workman did not lead evidence and subsequently remained absent from 15-7-2004 and hence no evidence came to be led on behalf of the workman.

8. The Bombay High Court in the case of V. N. S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71 393 has held that there is nothing in the Industrial Disputes Act, 1947 which indicates a departure from the general rule that he who approaches a court for relief should prove his case, i.e. the obligation to lead evidence to establish an allegation made by a party is on the party making the allegation, the test being that he who does not lead evidence must fail. In another case i.e., in the case of V. K. Raj Industries v/s Labour Court(I) & others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court but the principles underlying the said act are applicable. The High Court has further held that it is well settled that after a party challenges the validity of an order the burden lies on him to prove the illegality of the order and if no evidence is produced the Party invoking the jurisdiction must fail. The High Court

has also held that if the workman fails to appear or to file written statement or produce evidence the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

9. In the present case the burden was on the workman to prove that the action of the employer in terminating his services w.e.f. 26-11-2001 is illegal and unjustified. As mentioned earlier, though several opportunities were given to the workman he did not lead any evidence in support of his case. In the circumstances, there is no material before me to hold that the action of the employer in terminating the services of the workman is illegal and unjustified. Hence, I hold that the workman has failed to prove that the action of the employer in terminating his services w.e.f. 26-11-2001 is illegal and unjustified and therefore I answer the issue No. 1 in the negative.

10. Issue No. 4: While deciding issue No. 1, I have held that the workman has failed to prove that the action of the employer in terminating his services w.e.f. 26-11-2001 is illegal and unjustified. This being the case the workman is not entitled to any relief and I hold so accordingly and answer the issue No. 4 in the negative.

In the circumstances, I pass the following order.

#### ORDER

It is hereby held that the action of the management of M/s. UVI Holidays Ltd., Alto Porvorim, Bardez, Goa, in terminating the services of the workman Shri Florence D'Silva, Driver, with effect from 26-11-2001, is legal and justified. It is hereby further held that the workman Shri Florence D'Silva, is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 06-05-2005 in reference No. IT/12/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 27th May, 2005.



IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/12/2003

Workmen, rep. by  
Mumbai Mazdoor Sabha,  
Kennedy House, 4th floor,  
Goregaonkar Road,  
Mumbai-7.

... Workman/Party I

V/s

M/s. Ciba Speciality  
Chemicals (I) Ltd.,  
Santa Monica Works,  
Corlim, Ilhas-Goa.

... Employer/Party II

M/s. Super Services,  
Dr. A. Borkar Road,  
Opp. Goa Gas Service,  
Panaji-Goa.

... Employer/Party II(a)

Workmen/Party I - Represented by Adv. Shri V. Menezes.

Employer/Party II - Represented by Adv. Shri G. K. Sardesai.

Employer/Party II(a) - Represented by Adv. Shri A. Nigalye.

Panaji, dated: 6-5-2005.

AWARD - Part I

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Central Government by order dated 7th March, 2003, bearing No. 28/12/2003-LAB/388 referred the following dispute for adjudication of this Tribunal.

- (I) Whether, on the ground that the contract M/s. Super Services and M/s. Ciba Speciality Chemicals (India) Ltd., is sham and bogus, the demand of Mumbai Mazdoor Sabha on behalf of workmen, namely, Shri Gangappa Talwar and Shri Eknath R. Khandeparkar, for doing away with the existence of middle man as contractor and for regulation of their working conditions at par with the direct employees of the company is legal and justified?
- (II) If the answer to issue No. (I) above is in the affirmative, then, to what relief, benefits and fitment in pay scale at M/s. Ciba Speciality Chemicals (India) Ltd., these workmen are entitled to and from what date, irrespective of their continuance in employment or not on the date of this reference and pending award on this reference?
- (III) If answer to issue No. (I) above is in the negative, then to what relief, if any, the workmen are entitled?

2. On receipt of the reference registered A/D notice was issued to the Workmen/Party I (for short, 'Union') and the Party II M/s. Ciba Speciality Chemicals (I) Ltd., In pursuance to the said notice the parties put in their appearance. The Union thereafter filed an application dated 17-6-2003 at Exb. 4 for adding M/s. Super Services as a party to the proceedings. After hearing the parties this Tribunal passed the order dated 20th August, 2003 allowing the application filed by the Union and M/s. Super Services was added as a Employer/Party II(a) to the above proceedings. The Union filed statement of claim at Exb. 11. The facts of the case in brief as pleaded by the Union are that the Employer/Party II (for short, 'Company') has been employing sweepers through the contractors and though the contractors change the workmen employed through the past contractors continue to be employed through the new contractors. That the company has been persistently continuing to engage the workmen for the work of sweeping through the contractors as the work is of perennial nature, with a view to deprive them of better benefits and conditions of service applicable to regular employees working in the factory. That the workmen Shri Gangappa Talwar and Shri Eknath R. Khandeparkar (for short, "workmen") were employed by the company through the Employer/Party II M/s. Super Services (for short, "contractor"). That the said workmen functioned under the direct supervision and administration of the company and the said work was controlled and looked after by an officer of the company exclusively assigned for the said task. That the action of the company in persistently treating the sweeper employees as contract workers without granting them the status of permanency and continuity of service and instead setting up a middle man in the guise of contractor with a view to deny them the status of permanency and parity with regular confirmed employees amounts to a unfair labour practise under item 10 of the 5th schedule to the Industrial Disputes Act, 1947. That the contract signed between the company and the contractor is a sham and bogus contract entered upon with a view to deny the workmen the benefits of permanency and regular employment with the company.

4. The company filed written statement at Exb. 12. The company stated that the workmen for whom the relief is sought are not their employees and therefore there cannot be industrial dispute between the company and the union concerning the workmen. The company stated that they had entered into cleaning contract and the workmen for whom the relief is sought were employed by the contractors who used to supervise and control their work and pay their wages. The company stated that they had entered into a contract under which the contractor was required to maintain cleanliness of the factory premises and for that purpose he had employed two sweepers and their work was supervised by the contractor. The company stated that in as much as the work of the said workmen were supervised and controlled by the contractor and they were paid wages and other benefits by the contractor, they cannot be considered as employees of the company.

The company stated that the contractor had covered his employees under the ESI Act and the Employees Provident Fund Act and they were also paid bonus by the contractor. The company stated that the contractor engaged for the purpose of cleaning terminated his contract with the company and also terminated the services of the workmen employed by him and offered to them notice pay and retrenchment compensation. The company stated that the reference is not maintainable as the matter falls under Contract Labour (Regulation and Abolition) Act. The company stated that unless contract labour is abolished by the Government by issuing a notification under Sec. 10 of the Contract Labour (Regulation and Abolition) Act, no relief can be granted to the workmen, and even if it is abolished the company is not required to absorb the workmen in its employment. The company stated that the union Mumbai Mazdoor Sabha has no authority to raise industrial dispute in regard to the contract labour/workmen as it has ceased to represent the majority of the workmen employed by the company, and that the majority of the workmen are represented by the union Kamgarancho Ekvott. The company stated that the said union represents only one workman out of 52 workmen employed by the company in the factory and the remaining are represented by the other union namely, Kamgarancho Ekvott. The company stated that there is no resolution passed either by Mumbai Mazdoor Sabha or Kamgarancho Ekvott in support of the demand for absorption of contract labour in the services of the company. The company denied that the contracts entered into with the contractors are the sham and bogus contracts. The company stated that the conditions of contracts have been specified in the contracts themselves which satisfy the requirements of law. The company stated that the allegation of the union that the contracts are sham is baseless. The company denied that the workmen employed by the contractor function under the direct supervision of the company or its officers or that the day to day cleaning and sweeping work is looked after by the company or its officers. The company denied that it had set up a middleman in the guise of a contractor with a view to deny the workmen the status of permanency and parity with regular employees of the company. The company stated that the question of granting status of permanency by them did not arise as the workmen were employed by the contractor and not by the company. The company denied that it is engaged in unfair labour practice under item 10 of the Fifth Schedule of the Industrial Disputes Act, 1947. The company stated that the work of cleaning and sweeping is not of perennial nature and since the services of the workmen have been terminated by the contractor, the reference is not maintainable.

5. The contractor M/s. Super Services filed his written statement at Exb. 13. The contractor stated that there is no industrial dispute existing or apprehended between him and the union. He stated that the Mumbai Mazdoor Sabha has no locus standi to espouse the dispute on behalf of the workmen and to represent them in the reference. He stated that the purported dispute

does not survive since he ceased to have any relation with the company and the services of the workmen were terminated. He stated that this Tribunal has no jurisdiction to entertain and decide the reference as against him. The contractor stated that in or around the year 1989 he learnt that the company was in need of a contractor for the purpose of cleaning certain areas including bathrooms and toilets in its premises at Santa Monica Plant at Corlim-Goa and he being the professional contractor approached the company for the said job and after mutual discussion and negotiations the company awarded the contract to him and it was renewed from time to time on the terms and conditions agreed upon. The said contractor stated that he employed workers and employees for the said work and their work was supervised by him and he had the absolute and ultimate control over them. The said contractor stated that a dispute for wages during the strike period raised by the workmen through Goa Trade and Commercial Workers Union was referred to the Industrial Tribunal for adjudication being reference No. IT/36/96 and during the pendency of the said dispute a settlement was signed between him and the workmen to which the company was not a party nor it was a party to the dispute. The said contractor stated that he discontinued the contract with the company from 31-12-2002 and since the workmen employed by him specifically for the work had become redundant, their services were terminated and all their legal dues including retrenchment compensation were offered to them. The said contractor stated that in view of the above the reference as against him is not maintainable nor it survives as against him. The said contractor stated that the workmen are represented by Goa Trade and Commercial Workers Union and the Mumbai Mazdoor Sabha has no locus standi to raise the dispute on their behalf or to represent them in the reference. The said contractor denied that the workmen functioned under the supervision and administration of the company or that the day to day operations were controlled and looked after by the officers of the company. The said contractor denied that he has been set up as a middleman in the guise of a contractor to deny the workmen a status of permanency and parity with regular employees or that unfair labour practice is committed in respect of the said workmen. The said contractor stated that the contract entered into by him with the company is a legal and genuine contract and since the workmen were his employees they cannot claim employment with the company. The said contractor stated that the workmen have no legal right for absorption as employees of the company. The said contractor stated that the workmen are not entitled to any relief as claimed by them. The Union thereafter filed rejoinder at Exb. 14.

6. On the pleadings of the parties, issues were framed at Exb. 15 and thereafter the evidence of the union and the company was recorded. The contractor did not lead any evidence in the matter. After the evidence was concluded case was fixed for hearing final arguments. At this stage the workman Shri Gāngappa Talwar filed an application dated 9-6-2004 stating that he has

arrived at a settlement dated 8-6-2004 with the contractor M/s. Super Services and he produced the said settlement. He stated that in view of the settlement he has no surviving claim and he does not wish to pursue the reference. He prayed that an award be passed in terms of the said settlement. He also filed along with the application his affidavit stating that he has accepted his legal dues and ex-gratia payment from the contractor and the said dues have been paid to him by demand draft in the sum of Rs. 58,010.00 at the time of the signing of the settlement dated 8-6-2004. He stated in the affidavit that he has no claim against the company for absorption and regularisation nor he has any other relief against the company. He further stated that he has entered into a settlement with the Contractor voluntarily out of his free will.

7. The company as well as the contractor gave no objection to the application filed by the workman for passing the award in terms of the settlement dated 8-6-2004. I have gone through the terms of the settlement dated 8-6-2004 filed by the workman and I am satisfied that the said terms of the settlement are certainly in the interest of the workman. I, therefore accept the submission made by the parties and pass the consent award in respect to the workman Shri Gangappa Talwar, in terms of the settlement dated 8-6-2004.

#### ORDER

1. The Workman accepts the termination of his service by the Employer at the close of working hours on 31st December, 2002.

2. The Workman accepts his legal dues and ex-gratia payment from the Employer as given below:

One month's wages in lieu of notice	Rs. 2730.00
Retrenchment compensation at the rate of 15 days's Wages per year for 12 years from 01-01-1991 to 31/12/2003	Rs. 16830.00
Gratuity for 12 years' service	Rs. 18900.00
Ex-gratia payment from Employer	Rs. 20000.00
	Rs. 58010.00

3. The employer hereby hands over the above amount of Rs. 58010/- by demand draft to the workman at the time of signing this settlement.

4. The Employer has deposited all the Provident Fund dues in respect of the Workman in the Government Treasury and the Workman may apply to the Provident Fund authorities for settlement of his Provident Fund.

5. The Workman accepts the above payments from the Employer in full and final settlement of his dues from the Employer and the Workman has no further claim on the Employer whatsoever.

6. The Workman has resigned from the membership of the Union, Mumbai Mazdoor Sabha vide letter dated 07-06-2004 and has withdrawn all authority given to the said Union and/or its office-bearers and/or its representatives/advocates to represent him before the Industrial Tribunal/Labour Court and/or any court of law and/or any authority/person and/or to take any decisions on his behalf.

7. The Workman has no claim of absorption or regularization or any relief whatsoever on the Company (Ciba Speciality Chemicals (India) Limited.)

8. The Workman has no claim whatsoever on the Company and fully settles as withdrawn all claims in the matter referred to the Industrial Tribunal bearing No. IT/12/2003 and fully dissociates himself from the matter as also from any claims lodged on his behalf before any other court or authority.

9. The Workman has found alternative gainful employment after the termination of his service by the Employer. Regardless of his employment status, the Workman has no claim of employment on the Employer or on the Company.

10. Both parties agree to jointly file the present settlement before the Industrial Tribunal in reference No. IT/12/2003 for an award in terms of the settlement to the extend it concerns the Workman.

11. Both parties agree to register this settlement with the office of the Commissioner, Labour as per the provisions of the Industrial Disputes Act, 1947.

12. Both parties agree to forward a copy of this settlement to the Company (Ciba Speciality Chemicals (India) Limited) for information and necessary action.

No order as to cost. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Notification

No. 28/6/2005-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 13-06-2005 in reference No. IT/37/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.  
Vasanti H. Parvatkar, Under Secretary (Labour).

Porvorim, 20th June, 2005.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/37/2002

Workmen Rep. by  
Goa Trade & Commercial  
Workers Union,  
Velho Building, 2nd Floor,  
Panaji-Goa.

... Workmen/Party I

V/s

M/s. Polytainer Industries,  
P/12, Corlim Industrial Estate,  
Corlim, Ilhas Goa.

.... Employer/Party II

Workmen/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Adv. Shri G. B. Kamat.

Panaji, dated: 13-6-2005.

AWARD

In exercise of the powers conferred by clause (d) of sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12-6-2002 bearing No. 28/27/2001-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Polytainer Industries, Corlim Goa, in terminating the services of the following workmen with effect from 26-11-2001 is legal and justified ?

- (1) Vithal Goankar, Operator.
- (2) Kashinath Gaude, Operator.
- (3) Manoj Wellingker, Operator.
- (4) Francis Gracias, Operator.
- (5) Dinesh Naik, Operator.
- (6) Millinath Shirgaonkar, Operator.
- (7) Sudesh Sawant, Operator.
- (8) Ramesh Mardolker, Operator.

If not, to what relief the workmen are entitled ?"

2. On receipt of the reference a case was registered under No. IT/37/2002 and registered A/D notice was issued to the parties. On receipt of the notice, the parties put in their appearance. The Workmen/Party I (for short "Union") filed the statement of claim at Exb. 4. The Union's case in brief is that the Employer/Party II (for short, "employer") has a factory situated at Corlim Industrial Estate, Ilhas Goa and is engaged in the business of manufacturing plastic bottles and other

products. The union raised industrial dispute on 19-11-2001 in respect in the non settlement of charter of demands served on the management of the employer. The said matter was admitted in conciliation by the Asst. Labour Commissioner. The employer locked out the factory w.e.f., 26-11-2001 without giving prior notice or compensation to the workmen and the workmen were not allowed to sign the attendance register w.e.f. 19-11-2001. The union raised the dispute regarding lock out on 28-11-2001. The conciliation proceedings were held by the Labour Commissioner but the management did not participate in the said conciliation proceedings. Thereafter the employer closed its establishment and the conciliation officer was requested to take up the matter of illegal closure and not lock out as the closure was illegal and unjustified. The union contended that the employer did not give any notice nor paid notice pay or closure compensation to the workmen. The union contended that after closing the factory the employer started manufacturing activities at various other factories by shifting its entire machinery from Corlim Industrial Estate to the factory situated at Madkaim which is run in the name of Madkaim Plastic and also at a newly set up factory situated at Priol, Mardol, Goa. The union contended that by enforcing illegal closure the services of the workmen have been terminated without notice, notice pay or compensation. The union contended that the termination of services of the workmen is illegal and therefore they are entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer stated that the reference is not maintainable because the union has no locus standi to espouse the dispute on behalf of the workmen. The employer stated that it was engaged in the business of manufacturing blow and injection moulded plastic containers/bottles for industrial use at its factory situated at Corlim Industrial Estate, Corlim, Goa, and used to supply the products to M/s. Ciba (now Syngenta) which were used by the said company for packing of the pesticides. The employer stated that on account of the lack of orders and resultant losses, accumulation of un-disposed stock, steep increase of the labour charges the entire running of the factory was rendered uneconomical and therefore the employer decided to reorganize the working of the establishment and as such the services of 2 employees in the category of 'Workers Grade-II' namely Mrs. Romaldina Fernandes and Ms. Leela Gaude were found to be surplus and their services were terminated w.e.f., 14-11-2001 vide letter dated 10-11-2001. The employer stated that the dispute regarding the termination of their services is pending before this Tribunal under reference No. IT/36/2002. The employer stated that the demands submitted by the union were exorbitant and the employer was not in a financial position to concede to the said demands and on opposing the said demands the workers at the instigation of the union started adopting pressurizing tactics and one of such tactics was to slit cut at bottom when the container/bottle was in hot condition just released from the mould. That the employer received an oral message from, Ciba that

32,000 bottles were found to be leaking and they were returned to the employer thereby causing loss of Rs. 64,000/-. That therefore the employer was compelled to close down its establishment w.e.f., 20-11-2001 and accordingly the services of the workers were terminated w.e.f., 21-11-2001, vide letter dated 17-11-2001. The employer stated that the workers refused to accept the said letters as well as cheques issued to them towards the payment of notice pay and compensation. The employer denied that the closure of its establishment is illegal and stated that the closure is real and genuine. The employer denied that the workmen are entitled to any relief as claimed by them. The Union thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties, issues were framed at Exb. 7 and thereafter the case was fixed for recording the evidence of the union. When the evidence of the union was partly recorded, the parties submitted that they are trying to arrive amicable settlement and therefore at the request of the parties the case was fixed on 1-3-2005 for filing the terms of the settlement. Accordingly, on the said date Adv. Shri Suhas Naik appeared on behalf of the Union and Adv. Shri G. B. Kamat appeared on behalf of the employer, and they submitted that the dispute between the parties has been amicably settled and they filed the terms of the settlement dated 1-3-2005 at Exb. 10. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workmen. I, therefore accept the submission made by the parties and pass the consent award in terms of the settlement dated 1-3-2005 Exb. 10.

## ORDER

1. That the work persons above named filed a Claim Application under No. LCC/47/2002 alongwith two other workpersons claiming legal dues due to each of them from the Party No. II above named on account of termination of their services on account of the Closure as aforesaid.
2. That the Party No. II above named has paid all work persons above named and have received the amount due to each of them in full and final settlement of their Claim arising out of the termination of their services on account of closure as aforesaid.
3. In consideration of the payment as aforesaid all work persons agree that the dispute in respect of the termination of their services by the Management of M/s. Polytainer Industries/Party No. II above named with effect from 26-11-2001 stands conclusively settled and that they have no Claim of whatsoever nature against the Party No. II.
4. The Parties pray that the Award may be passed in terms of the above Settlement.

No order as to cost. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.